

AMENDED IN SENATE AUGUST 25, 2003

AMENDED IN ASSEMBLY APRIL 7, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1335

Introduced by Assembly Member Matthews

February 21, 2003

An act to amend Section ~~12847~~ 46013.1 of the Food and Agricultural Code, and to amend Sections 110815, 110835, 110838, 110875, and 110930 of, and to repeal Section 110839 of, the Health and Safety Code, relating to ~~pesticides~~ organic products.

LEGISLATIVE COUNSEL'S DIGEST

AB 1335, as amended, Matthews. ~~Pesticides: mill assessments~~
Organic products.

Existing law defines terms used with respect to regulation of organic products. Existing law, the California Organic Products Act of 2003, regulates the production of products sold, labeled, or represented as organic. Existing law provides that producers, handlers, and processors of organic products shall pay a registration fee to the Secretary of the Department of Food and Agriculture which shall be based on gross sales of product sold as organic in the calendar year that precedes the date of registration, as specified.

This bill would define "product" for purposes of these provisions as animal food, and food for human consumption, as specified, and would remove cosmetic products from regulation by these provisions. This bill would state legislative intent to permit the Director of the Department of Health Services to develop proposed standards to regulate the use of

the term ‘organic’ in connection with the sale of cosmetics and to petition the United States Food and Drug Administration to adopt those standards. This bill would make a technical, nonsubstantive, change. This bill would also make a clarifying change in the provisions regarding the registration fees applicable to individual classifications of fee payers.

~~Existing law requires every registrant of a pesticide product to pay the Director of Pesticide Regulation a mill assessment on sales of pesticides for use in this state. Existing law requires that sales invoices for pesticides first sold into or within this state by a registrant, pesticide broker, pest control dealer, or other person required to pay the assessment show that the assessment on those pesticides registered by the director or those pesticides that are not nonagricultural pesticides labeled only for home, industrial, or institutional use will be paid by the registrant, broker, dealer, or person, respectively. Existing law provides that all other sales invoices for pesticides sold into or within this state, except retail sales of those nonagricultural pesticides labeled only for home, industrial, or institutional use shall show as a comment on the invoice that the assessment will be paid, and may show an amount or rate that represents the assessment.~~

~~This bill would require that sales invoices for pesticides first sold into or within this state by a registrant, pesticide broker, pest control dealer or other specified person to show that specified mill assessments will be paid by the registrant, broker, pest control dealer, or other person, respectively. This bill would require that all subsequent sales invoices for pesticides sold into or within this state by those people show that the assessment will be paid, and may show an amount or rate that represents the assessment.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. — Section 12847 of the Food and Agricultural~~
- 2 *SECTION 1. It is the intent of the Legislature to permit the*
- 3 *Director of the Department of Health Services, based upon*
- 4 *available resources, and in consultation with the California*
- 5 *Organic Products Advisory Committee, to develop proposed*
- 6 *standards to regulate the use of the term ‘organic’ in connection*

1 *with the sale of cosmetics and to petition the United States Food*
2 *and Drug Administration to adopt those standards.*

3 *SEC. 2. Section 46013.1 of the Food and Agricultural Code*
4 *is amended to read:*

5 46013.1. (a) Every person engaged in this state in the
6 production or handling of raw agricultural products sold as
7 organic, and retailers that are engaged in the production of
8 products sold as organic, and retailers that are engaged in the
9 processing, as defined by the NOP, of products sold as organic,
10 shall register with the agricultural commissioner in the county of
11 principal operation prior to the first sale of the product. All
12 processors of organic agriculturally derived products that are not
13 required to be registered as outlined in subdivision (b) must
14 register with the secretary. Each registrant must annually renew
15 the registration unless no longer engaged in the activities requiring
16 the registration. Each registrant shall provide a complete copy of
17 its registration to the county agricultural commissioner in any
18 county in which the registrant operates.

19 (b) Every person engaged in this state in the processing or
20 handling of processed products pursuant to Section 110460 of the
21 Health and Safety Code, and pet food pursuant to Section 18653,
22 ~~and cosmetics pursuant to Section 111795 of the Health and Safety~~
23 ~~Code, including processors of alcohol~~ *alcoholic* beverages, fish,
24 and seafood, shall register with the State Director of Health
25 Services.

26 (c) Registration pursuant to this section shall be on a form
27 either provided by the secretary or approved by the secretary and
28 shall be valid for a period of one calendar year from the date of
29 validation by the secretary or county agricultural commissioner of
30 the completed registration form.

31 (d) The information provided on the registration form shall
32 include all of the following:

33 (1) The nature of the registrant's business, including the
34 categorical products produced, handled, or processed that are sold
35 as organic and the names and registration numbers of those persons
36 for whom they sell product as applicable.

37 (2) (A) For producers, a map showing the precise location and
38 dimensions of the facility or farm where the products are
39 produced. The map shall also describe the boundaries of the
40 production area and all adjacent land uses, shall assign field

1 numbers to distinct fields or management units, and shall describe
2 the size of each field or management unit.

3 (B) When the registrant has not had control of the property
4 being registered for at least 36 months, documentation shall be
5 provided from previous owners or managers that shows the
6 36-month land use history. When the registrant is not the owner,
7 documentation shall be provided from the owner granting
8 permission for the parcel to be registered as organic by the
9 registrant.

10 (3) Sufficient information, under penalty of perjury, to enable
11 the secretary or county agricultural commissioner to verify the
12 amount of the registration fee to be paid in accordance with this
13 act.

14 (4) The names of all certification organizations or
15 governmental entities, if any, providing organic certification to
16 them.

17 (5) In the case of producers, for each field or management unit,
18 a list of all substances applied to the crop, soil, growing medium,
19 growing area, irrigation water or postharvest wash or rinse water,
20 or seed, including the source of the substance, the brand name, if
21 any, the rate of application, and the total amount applied in each
22 calendar year, for at least the applicable time periods specified in
23 this act.

24 (e) The registration form shall include a separate “public
25 information sheet” or its equivalent that shall include:

26 (1) The name and address of the registrant.

27 (2) The nature of the registrant’s business, including the
28 categorical products produced, handled, or processed that are sold
29 as organic.

30 (3) The names of all certification organizations or
31 governmental entities, if any, providing certification pursuant to
32 the NOP and this act.

33 (f) A registration form shall be accompanied by payment of a
34 nonrefundable registration fee by producers, handlers, and
35 processors, which shall be based on gross sales by the registrant of
36 product sold as organic in the calendar year that precedes the date
37 of registration or, if no sales were made in the preceding year, then
38 based on the expected sales during the 12-calendar months
39 following the date of registration. Unless specified elsewhere the
40 fee is based according to the following schedule:

	Gross Sales	Registration Fee
1		
2	\$ 0 – 4,999	\$ 25
3	\$ 5,000 – 10,000	\$ 50
4	\$ 10,001 – 25,000	\$ 75
5	\$ 25,001 – 50,000	\$ 100
6	\$ 50,001 – 100,000	\$ 175
7	\$ 100,001 – 250,000	\$ 300
8	\$ 250,001 – 500,000	\$ 450
9	\$ 500,001 – 1,000,000	\$ 750
10	\$ 1,000,001 – 2,500,000	\$ 1,000
11	\$ 2,500,001 – 5,000,000	\$ 1,500
12	\$ 5,000,001 – 15,000,000	\$ 2,000
13	\$ 15,000,001 – 25,000,000	\$ 2,500
14	\$ 25,000,001 – and above	\$ 3,000

15

16 (1) Any person required to register pursuant to this section
 17 whose registration fee would be less than seventy-five dollars
 18 (\$75) shall pay an initial registration fee of seventy-five dollars
 19 (\$75). Thereafter, the *amount of the* annual fee shall be as
 20 specified above *or, according to the applicable classification, as*
 21 *described in paragraphs (2) to (9), inclusive.*

22 (2) Any person selling a multi-ingredient product in which less
 23 than 70 percent of the ingredients are organic shall pay a fee of one
 24 hundred dollars (\$100) or one-half of the amount that would be
 25 due based on the above chart, whichever is more.

26 (3) Producers that sell processed product shall pay fees based
 27 on the value of raw product prior to being processed and the value
 28 of any product sold as unprocessed.

29 (4) Any person that packs, repacks, labels, sorts, or otherwise
 30 handles any organic product that is outside the jurisdiction of the
 31 State Director of Health Services and that does not take title or
 32 manage the sale of the product, but provides only handling services
 33 for organic product, shall register and pay one hundred dollars
 34 (\$100) per year.

35 (5) Commission merchants or brokers that do not take
 36 possession or title of the product but arrange for the sale of the
 37 product shall register and pay one hundred dollars (\$100) per year.

38 (6) A retail store engaged in the handling or processing of
 39 organic products shall register and pay a fee of one hundred dollars

1 (\$100) for each store location that processes organic products
2 onsite.

3 (7) Any person that provides temporary storage or
4 transportation for organic product and does not handle the raw
5 unpackaged product does not have to register.

6 (8) Any person that hires any other person for custom packing
7 or labeling shall register and pay a fee based on the total sales of
8 product custom produced for them as outlined in the chart above.

9 In addition to the required registration information above the
10 person must disclose on the registration form the names of all
11 companies that pack and process for them.

12 (9) Any person required to register pursuant to this section that
13 fits the description of more than one of the persons described
14 above shall pay the greater of the multiple amounts.

15 *SEC. 3. Section 110815 of the Health and Safety Code is*
16 *amended to read:*

17 110815. Unless otherwise defined pursuant to the National
18 Organic Program, the following words and phrases, when used in
19 this article, shall have the following meanings:

20 (a) “Animal food” means any food intended to be fed to any
21 household animal, including, but not limited to, cats, or dogs and
22 other carnivores. It does not include “feed” intended for livestock
23 as defined in Section 205.2 of Title 7 of the Code of Federal
24 Regulations.

25 (b) “Director” means the Director of the Department of Health
26 Services.

27 (c) “Enforcement authority” means the governmental unit
28 with primary enforcement jurisdiction, as provided in Section
29 ~~110930~~ 110930.

30 (d) “Handle” means to sell, process, or package agricultural
31 products.

32 (e) “Handler” means any person engaged in the business of
33 handling agricultural products, but does not include final retailers
34 of agricultural products that do not process agricultural products.

35 (f) “Handling operation” means any operation or portion of an
36 operation, except final retailers of agricultural products that do not
37 process agricultural products, that (1) receives or otherwise
38 acquires agricultural products and (2) processes, packages, or
39 stores agricultural products.

(g) “NOP” means the National Organic Program established pursuant to the Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.) and the regulations adopted for implementation.

(h) “Processing” means cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, eviscerating, preserving, dehydrating, freezing, or otherwise manufacturing, and includes packaging, canning, jarring, or otherwise enclosing food in a container.

(i) “Product” means animal food, and food for human consumption, including fish and seafood, except processed meat, fowl, and dairy products.

(j) “Prohibited materials” means any materials prohibited under regulations adopted by (Section 6517 of the federal Organic Foods Production Act of 1990 (7 U.S.C. Sec. 6501 et seq.)). For products not covered by the National Organic Program, prohibited materials are anything not on the approved list.

~~(j)~~

(k) “Secretary” means the Secretary of the California Department of Food and Agriculture.

~~(k)~~

(l) “Sold as organic” means any use of the terms “organic,” “organically grown,” or grammatical variations of those terms, whether orally or in writing, in connection with any product grown, handled, processed, sold, or offered for sale in this state, including, but not limited to, any use of these terms in labeling or advertising of any product and any ingredient in a multi-ingredient product.

~~(l)~~

(m) “USDA” means the United States Department of Agriculture.

SEC. 4. Section 110835 of the Health and Safety Code is amended to read:

110835. The director may adopt regulations allowing or prohibiting the use of substances in the processing of products that are exempt or excluded from certification under the NOP, ~~and animal food and cosmetics sold as organic.~~

SEC. 5. Section 110838 of the Health and Safety Code is amended to read:

1 110838. (a) ~~Cosmetic products sold, labeled, or represented~~
2 ~~as organic or made with organic ingredients shall contain, at least~~
3 ~~70 percent organically produced ingredients.~~

4 ~~(b)~~ The percentage of all organically produced ingredients in
5 an agricultural product sold, labeled, or represented as “organic”
6 or “100 percent organic,” or sold, labeled, or represented as being
7 made with organic ingredients or food groups, or as inclusive of
8 organic ingredients, shall be calculated as follows:

9 (1) For products containing organically produced ingredients
10 in solid form, by dividing the total net weight of combined organic
11 ingredients at formulation, excluding water and salt, by the total
12 weight of the finished product, excluding water and salt.

13 (2) For products containing organically produced ingredients
14 in liquid form, by dividing the fluid volume of all organic
15 ingredients, excluding water and salt, by the fluid volume of the
16 finished product, excluding water and salt. If the liquid product is
17 identified on the principal display panel or information panel as
18 being reconstituted from concentrates, the calculation should be
19 made on the basis of single-strength concentrations of the
20 ingredients and finished product.

21 (3) For products containing organically produced ingredients
22 in both solid and liquid form, by dividing the combined weight of
23 the solid ingredients and the weight of the liquid ingredients,
24 excluding water and salt, by the total weight of the finished
25 product, excluding water and salt.

26 ~~(c)~~

27 (b) The percentage of all organically produced ingredients in
28 an agricultural product must be rounded down to the nearest whole
29 number.

30 ~~(d)~~

31 (c) The percentage of all organically produced ingredients in an
32 agricultural product must be determined by the handler who
33 affixes the label to the consumer package and verified by the
34 handler’s certifying agent. The handler may use information
35 provided by the certified operation in determining the percentage.

36 *SEC. 6. Section 110839 of the Health and Safety Code is*
37 *repealed.*

38 ~~110839. Multi-ingredient cosmetic products sold as organic~~
39 ~~in California with less than 70 percent organically produced~~

~~ingredients, by weight or by fluid volume, excluding water and salt, may only identify the organic content as follows:~~

~~(a) By identifying each organically produced ingredient in the ingredient statement with the word “organic” or with an asterisk or other reference mark that is defined below the ingredient statement to indicate the ingredient is organically produced.~~

~~(b) If the organically produced ingredients are identified in the ingredient statement, by displaying the product’s percentage of organic contents on the information panel.~~

SEC. 7. Section 110875 of the Health and Safety Code is amended to read:

110875. (a) Every person engaged in this state in the processing or handling of processed products for human consumption, including dietary supplements, alcoholic beverages, and fish or seafood sold as organic (except for processors and handlers of processed meat, fowl, or dairy products and retailers that are engaged in the processing or handling of products sold as organic), and every person engaged in the processing or handling of animal food ~~and cosmetics~~ sold as organic, shall register with the director, and shall thereafter annually renew the registration unless no longer so engaged. Handlers of processed food products that are registered with the department pursuant to Article 2 (commencing with Section 110460) shall register under this section in conjunction with the annual renewal of their registration pursuant to that article. Handlers of organic products that are required to be registered to manufacture, pack, or hold processed food pursuant to Article 2 (commencing with Section 110460) of Chapter 5 of Part 5 of Division 104, licensed to bottle, vend, haul, or process water pursuant to Article 12 (commencing with Section 11070) of Chapter 5 of Part 5 of Division 104, certified to process or handle fresh or frozen seafood or fresh or frozen raw shellfish pursuant to Chapter 5 (commencing with Section 112150) of Part 6 of Division 104, licensed to operate a cold storage facility pursuant to Chapter 6 (commencing with Section 112350) of Part 6 of Division 104, licensed to process low acid canned foods pursuant to Chapter 8 (commencing with Section 112650) of Part 6 of Division 104, licensed to manufacture olive oil pursuant to Chapter 9 (commencing with Section 112875) of Part 6 of Division 104, and licensed or registered to process or hold pet food in California pursuant to Chapter 10 (commencing with Section

1 113025) of Part 6 of Division 104, shall possess a valid registration
2 or license in order to obtain a valid organic registration for the
3 same facility under this section. All others required to register
4 under this subdivision shall register within 30 days of forms being
5 made available for this purpose. Any processor or handler of
6 processed products required to register under this subdivision that
7 does not pay the registration fee required by subdivision (c) within
8 30 days of the date on which the fee is due and payable shall pay
9 a penalty of 1½ percent per month on the unpaid balance.

10 (b) Registration shall be on a form provided by the director and
11 shall be valid for a period of one calendar year from the date of
12 validation of the completed registration form. The director shall
13 make registration forms available for this purpose. The
14 information provided on the registration form shall include all of
15 the following:

16 (1) The nature of the registrant's business, including the
17 specific commodities and quantities of each commodity that is
18 handled and sold as organic.

19 (2) The total current annual organic gross sales, or if not selling
20 the product, the total current gross annual revenue received from
21 processing, packaging, repackaging, labeling, or otherwise
22 handling organic products for others, in dollars.

23 (3) The names of all certification organizations and
24 governmental entities, if any, providing certification to the
25 registrant pursuant to this article and the regulations adopted by the
26 NOP.

27 (4) Sufficient information, under penalty of perjury, to enable
28 the director to verify the amount of the registration fee to be paid
29 in accordance with subdivision (c).

30 (c) To the extent feasible, the director shall coordinate the
31 registration and fee collection procedures of this section with
32 similar licensing or registration procedures applicable to
33 registrants. When coordinating the organic registration with other
34 required registrations or licenses identified in subdivision (a), the
35 expiration date shall be the same expiration date as the valid
36 license or registration. For persons that hold two-year licenses or
37 registrations pursuant to subdivision (a), the organic registration
38 shall be renewed annually using the same expiration month and
39 day as the two-year license or registration.



(d) A registration form shall be accompanied by payment of a nonrefundable registration fee payable to the department by handlers which shall be based on annual gross sales of organic product or annual revenue received from processing, packaging, repackaging, labeling, or otherwise handling organic product for others, by the registrant in the calendar year that precedes the date of registration. If no sales or revenue were made in the preceding year, then based on the expected sales or revenue during the 12 calendar months following the date of registration. Unless specified elsewhere, the fee is based according to the following schedule:

Gross Annual Sales or Revenue	Annual Registration Fee
\$0–\$5,000	\$ 50
\$5,001–\$50,000	\$100
\$50,001–\$125,000	\$200
\$125,001–\$250,000	\$300
\$250,001–\$500,000	\$400
\$500,001–\$1,500,000	\$500
\$1,500,001–\$2,500,000	\$600
\$2,500,001–and above	\$700

(1) Any handler that does not take possession or title of the product but arranges for the sale of the product shall register and pay one hundred dollars (\$100) per year.

(2) Any person that only provides temporary storage for seven days or less, or only provides transportation for organic product and does not handle the processed packaged product, does not have to register.

(3) Any person that hires any other person to custom pack, repack, or label organic products shall register and pay a fee based on the total annual sales of products custom packed, repacked, or labeled for them as outlined in the chart above.

(e) Revenue received pursuant to this section shall be deposited in the Food Safety Fund created pursuant to Section 110050.

(f) The director shall reject a registration submission that is incomplete or not in compliance with this article and regulations promulgated by the NOP.

1 (g) The director shall provide a validated certificate to the
2 registrant.

3 (h) Registration forms shall be made available to the public for
4 inspection and copying at the main office of the department.
5 Copies of registration forms shall also be made available by mail,
6 upon written request and payment of a reasonable fee, as
7 determined by the director. Registration information regarding
8 quantity of products sold and gross sales volume in dollars shall
9 be deleted prior to public inspection and copying and shall not be
10 released to any person except other employees of the department,
11 the Department of Food and Agriculture, a county agricultural
12 commissioner, the Attorney General, any prosecuting attorney, or
13 any government agency responsible for enforcing laws related to
14 the activities of the person subject to this part.

15 (i) A registrant shall immediately notify the director of any
16 change in the information reported on the registration form and
17 shall pay any additional fee owed if that change results in a higher
18 fee owed than previously paid.

19 (j) The director in consultation with the California Organic
20 Products Advisory Committee, may suspend the registration
21 program set forth in this section if the director determines that
22 income derived from registration fees is insufficient to support a
23 registration enforcement program.

24 (k) A registration is considered legal and valid until revoked,
25 suspended, or until the expiration of the registration.

26 (l) The registration revocation process must be in conjunction
27 with other provisions of this article. The director can initiate the
28 revocation process for failure to comply with this article or any
29 part of the regulations adopted pursuant to the NOP. Any person
30 against whom the action is being taken shall have the opportunity
31 to appeal the action and be afforded the opportunity to be heard in
32 an administrative appeal. This appeal can be administered by
33 either the state or county agricultural commissioner's office.

34 (m) When the registration fee is not paid within 60 days from
35 the expiration date the account may be considered closed and the
36 registration voided. A notification will be sent to the registrant and
37 the certifier will notify them that they are no longer able to market
38 products as organic until the account is paid in full.

39 (n) Any registration that is more than 60 days late will be
40 considered invalid and it is a violation if product is sold as organic.

1 SEC. 8. Section 110930 of the Health and Safety Code is
2 amended to read:

3 110930. The director shall, to the extent funds are available,
4 enforce this article applicable to all processors and handlers of
5 processed products sold as organic, including handlers and
6 processors of fish and seafood, ~~cosmetics~~, and animal food
7 products sold as organic, except for processors and handlers of
8 processed meat, fowl, and dairy products.

9 Code is amended to read:

10 ~~12847. Sales invoices for pesticides first sold into or within~~
11 ~~this state by a registrant, pesticide broker, pest control dealer, or~~
12 ~~other person subject to this article shall show that the assessment~~
13 ~~specified in Sections 12841 and 12841.1 will be paid by the~~
14 ~~registrant, pesticide broker, pest control dealer, or person,~~
15 ~~respectively. All subsequent sales invoices for pesticides sold into~~
16 ~~or within this state by a registrant, pesticide broker, pest control~~
17 ~~dealer, or other person shall show that the assessment will be paid,~~
18 ~~and may show an amount or rate that represents the assessment.~~
19 ~~However, only the person who actually will pay the assessment~~
20 ~~may show the amount or rate of the assessment as a line item on~~
21 ~~the sales invoice.~~